

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AMY HARVEY, Petitioner, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent.	DOCKET NO. FCU-04-50 (C-04-177)
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued October 6, 2004)

On July 8, 2004, Amy Harvey filed with the Utilities Board (Board) an informal complaint, identified as C-04-177, alleging that Interstate Power and Light Company (IPL) added her name to the electric and gas account of her father, David Hathaway, without her permission. This resulted in IPL holding Ms. Harvey responsible for \$1,538.94 in charges on the account. Ms. Harvey acknowledges she communicated with IPL in 2000 and 2001 to discuss bills and payment arrangements on the account because her father was in poor health, but claims she had no intention of adding her name to the account and that she did not realize her name was added. Ms. Harvey moved in with her father in 2001 and continues to live at those premises. Mr. Hathaway is now deceased.

Ms. Harvey asked the Board to order IPL to refund any money paid to it by her that was applied to her father's debt. IPL filed a response on August 3, 2004. IPL said its records indicated Ms. Harvey called IPL on May 9, 2001, and asked that her name be added to the account. IPL noted that approximately two months later she made payment arrangements on the account and subsequently attempted to pay IPL pursuant to that agreement by using her father's checking account without proper authorization. IPL said Ms. Harvey entered into a second payment agreement on a new account for the same premises in 2004. IPL indicated Ms. Harvey has lived at the premises in question continuously since 2001.

On August 20, 2004, the Customer Services Section of the Board issued a proposed resolution that found Ms. Harvey responsible for the past due amount "because she helped incur part of the debt and because she took ownership of the debt by her actions." The proposed resolution also stated that Ms. Harvey had set up a payment agreement, attempted to pay pursuant to that agreement, and benefited from the electric and gas service. On September 3, 2004, Ms. Harvey filed a request for formal complaint proceedings.

The details of these events are contained in informal complaint file number C-04-177, which is incorporated into the record in this case. 199 IAC 6.7.

The Board issued an order dated October 4, 2004, docketing the complaint as a formal complaint proceeding and assigning the case to the undersigned presiding officer. Pursuant to Iowa Code § 476.3(1) (2003) and 199 IAC 6.5, a hearing regarding this complaint will be held.

The statutes and rules involved in this case include Iowa Code § 476.3 and Chapter 17A, and Board rules at 199 IAC 1.8, 20.2(2), 20.2(4), 20.4, and Chapters 6 and 7. A link to the Iowa Code and the Iowa Administrative Code (IAC) is contained on the Board's website at www.state.ia.us/iub.

The issues

The issues in this case generally involve whether Ms. Harvey is responsible for some or all of the gas and electric account of her father, either by having her name added to the account, assuming responsibility for the account, or receiving the benefit of the electric and gas service. There may be other issues raised by the parties in prefiled testimony.

Prepared testimony and exhibits

All parties will have the opportunity to present and respond to evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the undersigned presiding officer will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined

concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3). This procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

Ms. Harvey and IPL submitted evidence in the informal complaint stage of this proceeding. The entire informal complaint file is incorporated into the record in this proceeding. The parties may refer to items in the informal complaint file in their testimony, and do not need to resubmit documents previously filed. The informal complaint file is available for examination in the Board Records Center.

In their prepared testimony, the parties must address the issues identified above in this order, as well as any other issues they believe are relevant to this proceeding.

Party status

Ms. Harvey, IPL, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) are currently the parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2.

Each party must file an appearance identifying one person upon whom the Board may serve all orders, correspondence, or other documents. The written appearance should substantially conform to 199 IAC 2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Iowa Utilities Board,

350 Maple Street, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the contested case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned presiding officer unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3 and Chapter 17A, and Board rules at 199 IAC 1.8, 20.2(2), 20.2(4), 20.4, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. On or before November 5, 2004, Ms. Harvey and the Consumer Advocate (if it chooses to file testimony) must file prepared direct testimony and exhibits. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, Ms. Harvey and the Consumer Advocate must address the issues discussed above and file any other evidence not previously filed. Ms. Harvey should number her exhibits beginning with Exhibit 1. Consumer Advocate should number its exhibits beginning with Exhibit 100.

2. On or before November 19, 2004, IPL must file prepared rebuttal testimony and exhibits. IPL may refer to any document already in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony and exhibits, IPL must address the issues discussed above and file any other evidence not previously filed. IPL should number its exhibits beginning with Exhibit 200.

3. If Ms. Harvey or the Consumer Advocate is going to file prepared rebuttal testimony, it must be filed by December 3, 2004.

4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines,

Iowa, on December 16, 2004, commencing at 10 a.m. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

5. Any party who wishes to file a brief may do so on or before January 7, 2005.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

UTILITIES BOARD

/s/ Mark O. Lambert
Presiding Officer

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 6th day of October, 2004.